Goodmans LLP Update

Corporate Securities Law

November 13, 2014

ISS and Glass Lewis 2015 Proxy Season Guidelines

Proxy advisory firms Institutional Shareholder Services Inc. (ISS) and Glass Lewis & Co. (**Glass Lewis**) recently released their proxy voting policy updates for the 2015 proxy season. The new guidelines address, among other things, corporate governance standards, advance notice policies and executive compensation. This update summarizes some of the more significant changes made to the proxy voting guidelines affecting Canadian issuers, effective for shareholder meetings on or after February 1, 2015.

Corporate Governance

Director Independence

- ISS will now consider a former CEO serving on the board to be an independent director following a five year cooling-off period (i.e., starting five years after the director ceased to act as CEO).
- ISS has also added a general requirement that an independent director must not have any "material relationships" with the company or any member of management. No guidance was provided on what ISS would consider to be a material relationship in this context.

Performance Based Recommendations

- Glass Lewis provided guidance regarding its practice of taking past performance into account when making recommendations on directors. Glass Lewis will be inclined to recommend against a director who has a history of serving on boards or as an executive of companies with records of poor performance, inadequate risk oversight, excessive compensation, auditor accounting-related concerns or other indicators of mismanagement.
- Glass Lewis will also recommend against a director who:
  - o fails to attend at least 75% of board meetings or committee meetings in the absence of a reasonable explanation for their poor attendance record;
  - o is also the CEO of a company where a serious and material restatement has occurred after the CEO had previously certified the pre-restatement financial statements;
  - o has received two against recommendations from Glass Lewis for identical reasons within the prior year at different companies (the same situation must also apply at the company being analyzed); or
  - o exhibits a pattern of poor oversight in the areas of executive compensation, risk management or director recruitment/nomination.

Majority Voting Policies

- Glass Lewis will recommend that shareholders withhold votes from all members of a non-controlled TSX listed company's governance committee where the issuer has not adopted majority voting.

Advance Notice Policies

- Glass Lewis and ISS will now both consider recommending against advance notice policies that do not provide for a new time period for shareholder nominations when an annual meeting is adjourned or postponed.
- ISS highlighted the following potentially problematic features of advance notice policies:
  - o any maximum upper limit on the time period for shareholder nominations (in contrast, Glass Lewis will support a notice period of not less than 30 and not more than 70 days before the meeting date);

- any restriction on the board's ability to waive the entire advance notice policy;
- any requirement that a shareholder deliver information in respect of a nominee beyond what is required in a dissident proxy circular or is otherwise required to determine the nominee's qualifications;
- any requirement for nominees to agree, in advance, to comply with company policies; and
- stipulations that the company will not be required to include information provided by nominating shareholders or their nominees in any shareholder communications.

- ISS will now recommend withholding votes from members of a board that adopted an advance notice policy and did not submit it to shareholders for ratification.

Executive Compensation

- Glass Lewis provided additional guidance with respect to:
  - qualitative factors (such as an effective overall incentive structure, significant forthcoming enhancements or reasonable long-term payout levels) that may result in Glass Lewis overriding a negative result from its quantitative analysis of executive compensation; and
  - "one-off awards," which Glass Lewis generally opposes (if existing executive compensation programs are not providing adequate incentives, Glass Lewis would prefer to see the compensation plans redesigned instead of having additional awards granted under the existing plans).

Please contact any member of our Corporate Securities Group to discuss these latest developments.